

No. 23-16141

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ROBERT F. KENNEDY JR.,
Plaintiff-Appellant,

vs.

GOOGLE LLC;
YOUTUBE, LLC,
Defendants-Appellees.

Appeal from United States District Court
for the Northern District of California
U.S. District Court Case No. 3:23-CV-03880-TLT

**DECLARATION OF JONATHAN H. BLAVIN IN SUPPORT OF
APPELLEES' OPPOSITION TO EMERGENCY MOTION UNDER
CIRCUIT RULE 27-3 FOR INJUNCTION PENDING APPEAL**

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DECLARATION OF JONATHAN H. BLAVIN

I, Jonathan H. Blavin, declare as follows:

1. I am an attorney at the law firm of Munger, Tolles & Olson LLP, counsel for Appellees Google LLC and YouTube, LLC (collectively, “Google” or “Appellees”) in the above-captioned matter. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could competently testify to them. I submit this declaration in support of Appellees’ opposition to Appellant’s emergency motion for injunctive relief pending appeal.

2. Exhibits A–D, described in detail below, were previously submitted to the district court as exhibits to the Declaration of Jonathan H. Blavin, which was attached to Google’s opposition to Kennedy’s application for a temporary restraining order.

3. Attached as Exhibit A is a true and correct copy of the proposed First Amended Complaint filed on February 15, 2023 in *Hart v. Facebook, Inc.* in support of the plaintiff’s Motion to Amend Complaint in that case. *See* Proposed First Amended Complaint, *Hart v. Facebook*, No. 3:22-cv-00737-CRB (N.D. Cal. Feb. 15, 2023), ECF 112-1. The proposed First Amended Complaint summarizes the materials that plaintiffs in that case sought to introduce, obtained from the proceedings in *Missouri v. Biden*, No. 3:22-cv-01213, 2023 WL 4335270 (W.D.

La. July 4, 2023), to demonstrate that Facebook’s and Twitter’s removal of certain content constituted state action, including:

- (1) an email “from federal government employee Rob Flaherty to . . . Facebook officials,” with the subject line “You are hiding the ball,” which “may be summarized as Flaherty dressing down and admonishing a Facebook official for the private social media company’s lack of transparency to the federal government regarding vaccine hesitancy and borderline content misinformation allowed to be posted on Facebook’s platform,” Ex. A (Proposed First Amended Complaint), ¶¶138–40 at 25:9-18, and a response in which the Facebook employee “grovel[s] and ask[s] Flaherty to hold Facebook ‘accountable,’” *id.* ¶ 142 at 25:24;
- (2) evidence that Facebook assured the U.S. Surgeon General that “[w]e hear your call for us to do more and . . . we’re committed to working toward our shared goal of helping America get on top of this pandemic,” *id.* ¶ 79 at 15:26-28, and “noted to Surgeon General Murthy, ‘You have identified 4 specific recommendations for improvement, and we want to make sure to keep you informed of our work on each,’” *id.* ¶ 82 at 16:11-12;

- (3) evidence that “the CDC sent an email to Facebook with examples of what COVID-19 messages were inappropriate for the public on private social media platforms and the Internet,” *id.* ¶ 46 at 9:19-21;
- (4) evidence that “Facebook had used its proprietary tool ‘CrowdTangle’ to monitor and report on social media posts that contradicted the federal government’s COVID-19 message and shared such information with the government”, *id.* ¶ 73 at 14:13-16;
- (5) evidence that “Facebook . . . offered CDC and the federal government a \$15 million-dollar in-kind donation to allow the government to advertise for free its COVID-19 public health message on Facebook’s private platform,” *id.* ¶ 39 at 8:20-22.

Relevant portions of Exhibit A are highlighted.

4. Attached as Exhibit B is a true and correct copy of the full transcript dated November 15, 2022 of the deposition of Carol Crawford, Division Director for the CDC’s Office of Associate Director for Communication, filed in *Missouri v. Biden*. See Transcript of Deposition of Carol Crawford, *Missouri v. Biden*, No. 3:22-cv-01213-TAD (W.D. La. March 3, 2023), ECF 205-1. Plaintiff here submitted excerpts from this transcript as Exhibit L to the Street Declaration. However, Plaintiff omitted several relevant portions of the transcript, including sections in which Ms. Crawford testified that the CDC played no role in the

creation or application of content policies for any online platforms. When asked whether she or “anyone at CDC” either “craft[ed] the content policy” of “any social media company” or even “g[ave] input on what such a policy should look like,” Ms. Crawford responded “No.” Ex. B (Crawford Deposition) at 103:20-104:10. Ms. Crawford also responded “No” when asked whether she or “anyone at the CDC help[ed] any . . . social media company on how they should apply their policies . . . toward a particular post.” Id. at 105:1-6. Relevant portions of Exhibit B are highlighted.

5. Attached as Exhibit C is a true and correct copy of a page from YouTube’s website titled *YouTube’s Community Guidelines*. This page informs users: “When you use YouTube, you join a community of people from all over the world. The guidelines below help keep YouTube fun and enjoyable for everyone.” It also explains that “The YouTube Community is one that’s built on trust,” and that “certain types of misinformation”—including COVID-19 medical misinformation and vaccine misinformation—“can cause real-world harm.” This page is also available at:

<https://support.google.com/youtube/answer/9288567?hl=en>.

6. Attached as Exhibit D is a true and correct copy of a page from YouTube’s website titled *How does YouTube address misinformation?*, explaining that YouTube has a “responsibility to connect people to high-quality content,” and

for that reason, “address[es] misinformation on [its] platform” using its “4 Rs” principle: YouTube “remove[s] content that violates [its] policies, reduce[s] recommendations of borderline content, raise[s] up authoritative sources for news and information, and reward[s] trusted creators.” This page is also available at: <https://www.youtube.com/howyoutubeworks/our-commitments/fighting-misinformation>.

7. Attached as Exhibit E is a true and correct copy of a page from YouTube’s website titled *Medical misinformation policy*. It states that “YouTube doesn’t allow content that poses a serious risk of egregious harm by spreading medical misinformation that contradicts local health authorities’ (LHAs) or the World Health Organization’s (WHO) guidance about specific health conditions and substances,” including “[p]revention misinformation,” “[t]reatment misinformation,” and “[d]enial misinformation.” It further specifies that “[YouTube does] not allow content that promotes information that contradicts health authority guidance on the prevention or transmission of specific health conditions, or on the safety, efficacy or ingredients of currently approved and administered vaccines.” This page is also available at: <https://support.google.com/youtube/answer/13813322>.

8. Attached as Exhibit F is a true and correct copy of Kennedy’s Complaint and the supporting documents filed alongside it in the district court.

9. Attached as Exhibit G is a true and correct copy of Kennedy's application for a temporary restraining order and the supporting declarations and attached exhibits filed alongside it in the district court.

10. Attached as Exhibit H is a true and correct copy of the official transcript from the August 21, 2023, hearing on Kennedy's application for a temporary restraining order.

11. Attached as Exhibit I is a true and correct copy of email correspondence between Counsel for Kennedy and Counsel for Google, in which Counsel for Google points out that "[o]n the current record," this Court "would lack jurisdiction [over this appeal] given that there are already-scheduled PI proceedings in the district court." Counsel for Google then proposes a joint stipulated request to convert the district court's denial of Kennedy's TRO application into a denial of a preliminary injunction motion and to vacate the then-scheduled preliminary injunction hearing date and briefing schedule.

12. Attached as Exhibit J is a true and correct copy of the district court's September 12, 2023 order denying the parties' stipulated request to convert the district court's denial of Kennedy's TRO application into a denial of a preliminary injunction and to vacate the then-scheduled preliminary injunction hearing.

13. The declaration submitted by Amaryllis Kennedy in support of Kennedy's emergency motion states that Google removed a video of Kennedy's

podcast interview with Joe Rogan around June 17, 2023. Declaration of Amaryllis Kennedy In Support of Emergency Motion for Injunction Pending Appeal ¶ 4. The complete podcast interview is available at:

<https://open.spotify.com/episode/3DQfcTY4viyXsIXQ89NXvg>. Kennedy makes various claims regarding vaccines in the video, including that the Hep C vaccine “caused the autism epidemic” (56:20-57:30) and that “vaccinologists went around searching the world to find the most horrendously toxic materials to add to vaccines” (23:45-24:25).

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on September 15, 2023 at San Francisco, California.

/s/ Jonathan H. Blavin
JONATHAN H. BLAVIN